IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3832 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN D/O VIRABHAI D - Petitioner(s)
Versus
NATVARSINH KESHRISINH SOLANKI - Respondent(s)

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Appearance :
MR AJ PATEL for Petitioner(s) : 1,
MR KC SHAH for Respondent(s) : 1,
MR RAMNANDAN SINGH for Respondent(s) : 1.2.1,1.2.2
RULE SERVED for Respondent(s) : 1.2.3

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 24/11/2005

CAV JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality

and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 30th April, 1991 in Revision Application No.TEN/BA/118/91 in dismissing the same and confirming the order passed by the Deputy Collector, Vadodara dated 31st December, 1990 in Tenancy Remand / Appeal No. 7 of 1990.

2. The dispute is with regard to the land bearing Survey No.4 situated at Village Kalupur, Taluka Savli (herein after referred to as “the land in question” for short). The original respondent named Kesharisinh Chunthabhai Solanki claiming to be the tenant of the land in question, submitted an application before the Mamlatdar & ALT, Savli, under Section 32(1)(B) of the Bombay Tenancy and Agricultural Lands Act; 1948 (hereinater referred to as “the Act” for short), contending inter-alia, that he was in possession of the land in question as a tenant on 15th June, 1955 i.e. on the Tillers Day and was dispossessed from the land by the land holders in the month of June/July, 1972 without following the mandatory procedure. He prayed for to restore the possession and to fix the purchase price. The Mamlatdar & ALT, after holding necessary inquiry, by his order dated 4th July, 1977 declared the said Kesharisinh

Chunthabhai Solanki was the tenant on 15th June, 1955 and that he was dispossessed without following the mandatory procedure and therefore, it was ordered by him to hand over the possession of the land in question to the said Kesharisinh Chunthabhai Solanki. Against the said order, the petitioner herein – original land owner preferred an appeal before the Deputy Collector (Tenancy Appeals) being Tenancy Appeal No.44 of 1977 and the Deputy Collector by his order dated 18th December, 1985 allowed the said appeal and quashed and set aside the order passed by the Mamlatdar & ALT on the ground that the tenant did not submit the application beyond the period of limitation. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Vadodara dated 18th December, 1985 in Revision Application No.44 of 1977, the tenant preferred Revision Application No.184 of 1986 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its order dated 29th December, 1989 allowed the said Revision Application and quashed and set aside the order passed by the Deputy Collector, Vadodara dated 18th December, 1985 and remanded the matter to the Deputy Collector for deciding the same afresh in view of the observations made in the said order. Thereafter,

on remand, after giving an opportunity to the concerned party, the Deputy Collector, Vadodara, by his order dated 31st December, 1990 dismissed the Tenancy Appeal No.7 of 1990 (Remand) and confirmed the order passed by the Mamlatdar & ALT, Savli, dated 4th July, 1977 in Tenancy Case No. 32(1)(B)/5434 of 1976, against which the petitioner preferred Revision Application No. TEN/BA/118/91 which came to be dismissed by the judgment and order dated 30th April, 1991 against which the petitioner has preferred the present petition under Article 227 of the Constitution of India.

3. The learned advocate appearing on behalf of the petitioner has submitted that the order passed by the Mamlatdar & ALT was passed without giving any adequate opportunity and the same was wrongly confirmed by the Deputy Collector and thereafter, by the Gujarat Revenue Tribunal has materially erred in dismissing the Revision Application filed by the respondents. It is further submitted that under Section 32(1)(B) of the Tenancy Act would have no application to the facts of the present case. It is further submitted that assuming that the case on behalf of the orig. respondent that he lost possession in the year 1960 can be accepted, in

that case also, it would not attract the provisions of Section 32(1)(B) of the Tenancy Act, in view of the fact that the land in question was granted to the deceased father of the petitioner under the provisions of the Chakariyat Abolition Act on the basis of the possession and the land was of a new and impartible tenure and has been held to be so in 1963. It is further submitted that since 1963 the land has been cultivated either by the father and/or the mother of the petitioner or by the petitioner herself and therefore, the provisions of Section 32(1)(B) of the Act would have no application to the land in question and therefore, it is requested to allow the present Special Civil Application.

4. Per contra, Shri Singh, learned advocate appearing on behalf of the respondent – tenant while supporting the judgment and order passed by the Gujarat Revenue Tribunal has submitted that so far as the contention on behalf of the petitioner that the land was a Chakariyat land and therefore, the provisions of the Section 32(1)(B) of the Tenancy Act would not be applicable is concerned, the said contention has not been raised by the petitioner either before the Mamlatdar & ALT and/or

before the Deputy Collector and/or before the Gujarat Revenue Tribunal and therefore, the same cannot be permitted to be raised for the first time before this Court in a petition under Article 227 of the Constitution of India. It is further submitted that the order passed by the Deputy Collector was considering the judgment of this Court in case of ***Rasulmiya V/s Lalbhai*** reported in **24(1) GLR P-714** the same has rightly been confirmed by the Gujarat Revenue Tribunal and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is required to be noted that the orig. respondent claims to be the tenant under the provisions of the Bombay Tenancy Act which is benevolent Act to protect the rights of the tenant. It is also required to be noted that the orig. respondent submitted an application under Section 32(1)(B) of the Act and the Mamlatdar & ALT on appreciation of evidence declared the orig. respondent to be the tenant of the land in question against which, the petitioner preferred appeal

before the Deputy Collector and the Deputy Collector allowed the said appeal and also confirmed the order passed by the Mamlatdar & ALT. Which also came to be confirmed by the Gujarat Revenue Tribunal relying upon the judgment of this Court in case of ***Rasulmiya (Supra)*** wherein, this Court has taken a view that once the Mamlatdar & ALT entertains the application of tenant under Section 32(1)(B) of the Act, in view of the fact that the Mamlatdar & ALT has suo-motu powers, for which, there is no time limit prescribed and therefore, it is to be presumed that the Mamlatdar & ALT has exercised suo-motu powers and therefore, even if aggrieved tenant might not have applied within the time for redressal of his grievance, relying upon the said judgment, the Gujarat Revenue Tribunal dismissed the said revision application and confirmed the order passed by the Deputy Collector as well as of the Mamlatdar & ALT. The Gujarat Revenue Tribunal relied upon the following observations of this Court in case of ***Rasumiya V/s. Lalbhai*** reported in **24(1) GLR P-714**, which reads as under :-

> *"In the present case also the Mamlatdar has been advisably entrusted with suo motu power by the legislature, to entertain any*

appropriate case under Section 32(1)(B) even if the aggrieved tenant might not have applied within time for redressal of his grievance. It is pertinent to note that Section 32(1)(B) is a beneficial provision enacted with a view to protect the rights of illiterate and ignorant tenants who might have been duped by their crafty landlords into giving up possession of their lands contrary to the provisions of the Tenancy Act. Such tenants might skip the period of one year's limitation as provided by the statutory rules. However, they are given a locum paenitentiae in the form of invocation of suo motu powers of Mamlatdar for getting justice. Their time barred applications seek to do nothing else but to inform the Mamlatdar about the injustice done to them. Once convinced of the justness of the grievance put forward by such a tenant, if the Mamlatdar proceeds to deal with the case under Section 32(1)(B) on merits, only inference that can follow form such a course adopted by the Mamlatdar is that he has thought it fit to invoke his suo motu powers which are not subject to any period of limitation."

7. So far as contention on behalf of the petitioner that the land was a Chakariyat land which was given to the father of the petitioner under Chakariyat Abolition Act and as he was in possession of the land in question and

therefore, the provisions of Section 32(1)(B) of the Tenancy Act would not be applicable is concerned, no such submission has been made by the petitioner – original landlord either before the Mamlatdar & ALT and/or before the Deputy Collector and/or before the Gujarat Revenue Tribunal and the same has been raised for the first time before this Court in a petition under Article 227 of the Constitution of India. The question as to whether the land was a Chakariyat land and therefore, the provisions of Section 32(1)(B) of the Act will be applicable or not is a pure question of fact which cannot be permitted to be raised for the first time before this Court in a petition under Article 227 of the Constitution of India. Even otherwise, there is no jurisdictional error committed by the Gujarat Revenue Tribunal, much less an error of law, which requires interference of this Court exercising powers under Article 227 of the Constitution of India. The Mamlatdar & ALT as well as the Gujarat Revenue Tribunal have rightly considering the benevolent Act and protected the rights of the tenant. Under the circumstances, it cannot be said that the judgment and order passed by all the authorities below inclusive of Gujarat Revenue Tribunal are in any way

illegal and/or contrary to the evidence on record.

8. For the reasons stated hereinabove, it cannot be said that all the three authorities below have committed any error in declaring the original respondent – Kesharisinh Chunthabhai Solanki as tenant of the land in question and thereby directing to hand over/restore the possession of the land in question to said Kesrisinh Chunthabhai Solanki. In the result, the present petition is required to be dismissed and the same is accordingly dismissed. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.